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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,325	12/17/2003	Mario Grazioli	DT-6728	7921
30377	7590	12/15/2005	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621				HARRIS, KATRINA B
ART UNIT		PAPER NUMBER		
3747				

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/738,325	GRAZIOLI ET AL.	
	Examiner	Art Unit	
	Katrina B. Harris	3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 December 2003.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-14 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 17 December 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

The following is a first action on the merits of application serial no. 10/738,325 filed December 17, 2003.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gschwend et al. (5,213,247). Gschwend et al. discloses a combustion - operated working tool including a setting tool for fastening elements, having a guide cylinder (8) axially displaceable relative to the device housing, a piston (7,7a) mounted displaceable in the guide cylinder (8), a stop (10a) integral with the device housing projecting into the

guide cylinder (8) to delimit an engagement of the piston (7,7a) in a direction of advance of the piston (7,7a) when the guide cylinder (8) is shifted in the direction of advance of the piston (7,7a), and an elastic adjusting element (32) that has tension upon moving the guide cylinder (8) into the device housing, wherein an engagement pad for engagement of the piston (7,7a) can be driven opposite to the direction of advance of the piston (8) by the elastic adjusting element after extension of the guide cylinder (8) out of the device housing.

Regarding claim 2, wherein the engagement part (31) is mounted on the guide cylinder (8) such that it can be at least one of swiveled and displaced.

Regarding claim 3, wherein the engagement part (31) can be locked and unlocked and moved out of the piston track, after the guide cylinder (8) is shifted into the direction of advance of the piston and the engagement part (31) has again reached its piston carrying position.

Regarding claim 4, wherein the elastic adjusting element (32) is arranged between the guide cylinder (8) and the engagement part (31).

Regarding claim 5, wherein the engagement part (31) is guided in a connecting part fixed to the guide cylinder (8).

Regarding claim 6, wherein the engagement part (31) is guided into a longitudinal slot extending in the direction of advance of the piston (7,7a) of the connecting part via two studs spaced apart from each other and that is at the forward lying end of the longitudinal slot direction of advance of the piston away from the axis of the piston.

Regarding claim 7, wherein the engagement part (31) can be moved opposite to the direction of advance against a stop (33) integral with the device housing.

Regarding claim 8, wherein a locking latch (31) is pivotably mounted on the guide cylinder (8) having one end for locking the engagement part in a position outside of the path of the piston and another end being operated by a ramp on the device housing to remove the locking of the engagement part (31).

Regarding claim 9, wherein the rear stud of the engagement part (31) has a tangential surface in the direction of advance of the piston (7,7a), which the one end of the latch can be swiveled in front of the tangential surface.

Regarding claim 10, wherein said one end of the locking latch (31) is pre-biased in the direction towards the longitudinal slot of the connecting piece.

Regarding claim 11, wherein the engagement part (31) is a lever that can be swiveled about an axis mounted on the guide cylinder (8).

Regarding claim 12, wherein a housing-integral stop is present for pivoting the engagement part (31).

Regarding claim 13, wherein the engagement part (31) can be swiveled by an arm connected to one of the engagement part (31) and an axis of the engagement part (31) that can be moved against the housing – integral stop.

Regarding claim 14 further comprising a locking latch (31) displaceable against a boss of the guide cylinder (8) for locking the engagement part (31) in a position pivoted out of the path of the piston (7,7a).

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katrina B. Harris whose telephone number is 571-272-4842. The examiner can normally be reached on 6:00 AM -2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on 571-272-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Katrina B. Harris
Examiner
Art Unit 3747

KBH



MAHMOUD GIMIE
PRIMARY EXAMINER